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HMR3-7141 LLC d/b/a Carl's Jr. and Los Angeles Workers Organizing Committee. Cases 31–CA–192343, 31–CA–192345, and 31–CA–194874

November 21, 2017

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN,
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge and amended charges filed by Los Angeles Workers Organizing Committee (the Union) on January 26, February 15, and June 27, 2017, respectively, in Case 31–CA–192343, a charge and amended charges filed by the Union on January 26, May 23, and June 27, 2017, respectively, in Case 31–CA–192345, and a charge and amended charge filed by the Union on March 14 and June 27, 2017, respectively, in Case 31–CA–194874, the General Counsel issued an order consolidating cases, consolidated complaint, and compliance specification, on July 31, 2017, alleging that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On September 8, 2017, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on September 11, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was received by August 21, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compli-

ance specification are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 22, 2017, advised the Respondent that unless an answer was received by August 28, 2017, a motion for default judgment would be filed.

On August 23, 2017, the Respondent's representative, Michael Razipour, sent an email to the General Counsel in response to the August 22, 2017 letter, requesting an extension of time until September 10, 2017, to file an answer to the consolidated complaint and compliance specification. By letter dated August 23, 2017, the General Counsel informed the Respondent that it had until noon on September 1, 2017, to file its answer. The letter also informed the Respondent that the Region would file a motion for default judgment with the Board should the Respondent fail to file an answer by that date. Nevertheless, the Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file an answer to the consolidated complaint and compliance specification, we deem the allegations to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business at 11224 S. Western Ave., Los Angeles, California (the Facility), and has been engaged in the retail sale of fast food and related products. In conducting its operations the Respondent annually derived gross revenues in excess of \$500,000, and purchased and received at its Facility products, goods, and materials valued in excess of \$5000, directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Daisy Lopez held the position of the Respondent's Facility General Manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following events occurred, giving rise to this proceeding:

1. The Respondent, by Daisy Lopez:

a. About December 14, 2016, at the Facility, prohibited employees from speaking with a union representative.

b. About December 29, 2016, at the Facility, interrogated employees about their protected concerted activities.

c. About December 29, 2016, at the Facility, solicited grievances from employees.

d. About December 29, 2016, at the Facility, prohibited employees from speaking with coworkers about their terms and conditions of employment inside of the Facility.

e. About December 29, 2016, at the Facility, instructed employees to speak directly to the Respondent's owner concerning complaints about employees' terms and conditions of employment rather than speaking with others.

f. About January 14, 2017, by telephone, prohibited employees from speaking with their coworkers about terms and conditions of employment inside of the Facility.

g. About January 20, 2017, at the Facility, interrogated employees about their protected concerted activities.

h. About January 20, 2017, at the Facility, threatened employees with job loss for engaging in protected concerted activities.

i. About January 20, 2017, at the Facility, told employees that they should not speak with union representatives and should kick them out of the Facility.

2. About December 28, 2016, and January 12, 2017, the Respondent's employee Ivan Nava engaged in concerted activities with other employees for the purposes of mutual aid and protection by publicly speaking about his support of the Union at union protests in front of a Carl's Jr. location owned by the same owner of the Respondent.

3. Starting about the pay period ending January 24, 2017, through the pay period ending February 21, 2017, the Respondent reduced the weekly scheduled hours for Nava.

4. The Respondent engaged in the conduct described above because Nava assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these or other concerted activities.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1 and 3, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in paragraph 3, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by reducing the weekly scheduled hours of Ivan Nava, we shall order the Respondent to make Nava whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, as set forth in the compliance specification, with interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws. In addition, we shall order the Respondent to compensate Nava for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 31 allocating backpay to the appropriate calendar year. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, HMR3-7141 LLC d/b/a Carl's Jr., Los Angeles, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Prohibiting employees from speaking with a union representative.

(b) Interrogating employees about their protected concerted activities.

(c) Soliciting grievances from employees.

(d) Prohibiting employees from speaking with coworkers about their terms and conditions of employment inside the Respondent's facility.

(e) Instructing employees to speak directly to the Respondent's owner concerning complaints about employees' terms and conditions of employment rather than speaking with others.

(f) Threatening employees with job loss for engaging in protected concerted activities.

(g) Telling employees that they should not speak with union representatives and to kick them out of the Respondent's facility.

(h) Reducing employees' weekly scheduled hours because they engaged in union or other protected concerted activities, and to discourage employees from engaging in these activities.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Ivan Nava whole for the loss of earnings and other benefits suffered as a result of the discrimination against him, by paying him the amount of \$1086.75, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision.

(b) Compensate Nava for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 31, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(c) Within 14 days of service by the Region, post at its Los Angeles, California facility copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the facility at any time since December 14, 2016.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 21, 2017

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT prohibit you from speaking with a union representative.

WE WILL NOT interrogate you about your protected concerted activities.

WE WILL NOT solicit grievances from you.

WE WILL NOT prohibit you from speaking with coworkers about your terms and conditions of employment inside of our facility.

WE WILL NOT instruct you to speak directly to our owner concerning complaints about employees' terms and conditions of employment rather than speaking with others.

WE WILL NOT threaten you with job loss for engaging in protected concerted activities.

WE WILL NOT tell you that you should not speak with union representatives and to kick them out of the facility.

WE WILL NOT reduce your weekly scheduled hours because you engaged in union or other protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make Ivan Nava whole for any loss of earnings and other benefits suffered as a result of our discrimination against him, by paying him the amount set forth in the Board's Order, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws.

WE WILL compensate Ivan Nava for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 31, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for Ivan Nava.

HMR3-7141 LLC D/B/A CARL'S JR.

The Board's decision can be found at www.nlrb.gov/case/31-CA-192343 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

